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US DISTRICT COURT SDNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - -x

MIDORI HOSOKAWA,

Plaintiff,

-v.

SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, and NEW YORK LOCAL OF SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,

Defendants.

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FIRST AMENDED COMPLAINT OF PLAINTIFF *PRO SE*

14 CV 006189 (LAP)

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DATE FILED: 7/1/15

JURY DEMAND:
PLAINTIFF DEMANDS TRIAL BY JURY
OF ALL ISSUES TRIABLE OF RIGHT BY A JURY

MIDORI HOSOKAWA, plaintiff *pro se* herein, complaining of the defendant SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS and NEW YORK LOCAL OF SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, respectfully alleges as follows:

JURISDICTION AND VENUE

1. This Court has proper jurisdiction to entertain the claims set forth herein by virtue of 28 U.S.C. sec. 1331

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(federal question jurisdiction); and by virtue of section 185 of the National Labor Relations Act, 29 U.S.C. sec. 151 et seq.; section 301(b) of the Labor Management Relations Act (29 U.S.C. sec. 141 et seq.); the Labor Management Reporting Disclosure Act ["LMRDA"] (29 U.S.C. sec. 401 et seq.); 28 U.S.C. sec. 1337(a); and by virtue of the Court's equitable, pendent, and supplemental jurisdiction (28 U.S.C. sec. 1367).

2. This Court is a proper venue for the claims set forth herein pursuant to 28 U.S.C. sec. 1391, by virtue of the fact that the defendant does business within this district, in that:

(a) Defendant has many members who, like the plaintiff *pro se* herein, reside and/or work in New York State and, in particular, reside and/or work within this judicial district;

(b) It maintains, in New York, one of two National offices (the other being in Los Angeles, where its headquarters is located);

(c) Defendant SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS maintains a New York local, which has offices located within the City, State, and County of New York and within this judicial district;

(d) The New York Local of SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS has offices located within the City, State, and County of New York and within this judicial district.

(e) The claims set forth herein arose within this State and within this judicial district.

THE PARTIES

Plaintiff

3. Plaintiff *pro se* MIDORI HOSOKAWA [alternatively referred to herein as "Plaintiff" or as "Hosokawa"] resides in the City of New York, State of New York, and County of New York, and resides within this federal district.

4. Plaintiff is of Japanese-American descent, having been born in Tokyo.

5. Plaintiff is a longtime actress, and over the better part of the last 30 years has made her living primarily or exclusively in that professional pursuit and as an interpreter.

6. Over the years, plaintiff has appeared in numerous television shows, including episodes of "Law & Order" and "One Life to Live"; several films, including "Extreme Measures" with the actor Hugh Grant; a multitude of commercials and advertisements; and has also done voiceover work for television and radio commercials, and modeling.

7. Plaintiff also has performed in live theatre, including as a dancer, and has likewise appeared in several music videos,

including Billy Joel's "Keeping the Faith."

8. She also is a Japanese interpreter, certified by the New York State Unified Court System, by certain United State District Courts, and by a consortium of state courts throughout the United States, and has also done interpreting for Japan Society and the United Nations.

9. Plaintiff became a member of the American Federation of Television and Radio Artists ["AFTRA"] in 1986 and a member of the Screen Actors Guild ["SAG"] in 1987, and is currently a member of the merged entity, Screen Actors Guild-American Federation of Television and Radio Artists ["SAG-AFTRA"].

10. Plaintiff has been a member in good standing of SAG/AFTRA since the time of the merger of SAG and AFTRA.

Defendants

11. SAG-AFTRA [sometimes referred to herein as the "Union" is a labor organization within the meaning of section 2(5) of the Labor Management Relations Act, 29 U.S.C. sec. 152(5), and operates as a labor union.

12. SAG-AFTRA has its headquarters at 5757 Wilshire Boulevard, Los Angeles, California, and operates a New York Local at 1900 Broadway, 5th floor, New York, New York 10023, as well as a National office in New York.

13. The SAG-AFTRA New York Local represents members working in New York State (except broadcasters in Buffalo and Rochester), northern New Jersey, and western Connecticut.

14. On or about March 30, 2012, SAG and AFTRA merged, becoming the Screen Actors Guild-American Federation of Television and Radio Artists" (also known by the acronymic "SAG-AFTRA"].

15. SAG-AFTRA is an American labor union that has more than 160,000 active members throughout the world, most of whom are film and television principal and background performers, journalists, radio personalities, announcers, program hosts, singers, puppeteers, stunt performers, and recording artists.

BACKGROUND

16. Plaintiff subscribes to "Casting Networks New York" ("CNNY") in order to receive some work assignments.

17. Through CNNY and plaintiff's many years of experience as a performer, she receives work from various casting companies and casting directors.

18. In television commercials, actors who appear therein are either "background performers" or "principal performers."

19. On or about July 16, 2013, plaintiff received a call from the casting director of Background Inc. to be a "background" performer in scenes to be filmed, for a Verizon

Wireless "Droid" television commercial, on July 18 and 19, 2013. The advertising agency "Dentsu McGarry Bowen LLC", is the employer, known as a "Signatory Producer," and was the entity that entered into an agreement for the commercial with the Union pursuant to the collective bargaining agreement.

20. The aim of the commercial was to advertise enhanced zoom-in functions that are included as part of Verizon Wireless's "droid" cell phone/cameras, contrast between old and new technology, and connection to social networking side of it.

21. Plaintiff was aware, at or about the time that she received the assignment for the Verizon commercial that any on-camera "principal performer" would be paid a session fee of $627.75, and a background performer would be paid $342.40 for the first eight hours.

22. In addition, there are an array of other pecuniary advantages to qualifying as a "principal performer," including session fees, applicable residuals based on the type of commercial, usage fees of internet, DVD, movie theatre, and other media, as well as amassing pension and health credits for which one may, after age 65, collect annuity payments. Most or all of these fees are paid only to principal performers.

23. She was similarly aware that overtime pay would amount to one and a half times the base pay figure, plus a wardrobe fee.

24. Plaintiff also reasonably expected to receive a night shoot fee, meal penalty, prop fee and other contractually applicable and customary compensation.

25. Contractual rate of pay per scale for background performer and principal performer are set.

26. It is a longstanding practice in the industry, however, that based on the "final edit" of a television commercial, a background performer can be upgraded to principal performer, and, concomitantly, a principal performer can be downgraded to a background performer.

27. Upon information and belief, such upgrading or downgrading is conducted by the advertiser or the advertising agency that serves as the signatory producer, who entered into the collective bargaining agreement with SAG/AFTRA.

28. Based on the "final edit," if a performer meets various criteria, he or she will be considered a "principal" under guidelines applied by the union.

29. When a performer contends that he or she should be deemed a "principal," the performer files an appropriate claim.

30. Such a claim is then, reviewed by the union. As part of that review, the union asks producers for all of the final footages, and is responsible to pursue a claim by, among other things, requesting the producers to upgrade the background performer to a principal.

31. Upon information and belief, at the conclusion of the Union's appropriate review, it is to issue a written response as to its disposition and to provide such written response to the performer, who filed the claim.

32. On its website, SAG-AFTRA describes some of the factors with which one can qualify for an upgrade to principal performer.

33. The SAG-AFTRA website declares that there are "several ways" to qualify for such an upgrade, and lists those that are the "most common."

34. Among the ways to upgrade to a principal performer are if a performer is directed to speak a line or to perform an identifiable stunt.

35. Other listed ways to upgrade to a principal performer are where the performer is in the foreground; is identifiable; and demonstrates or illustrates a product or service or illustrates or reacts to narration (whether on-camera or off-camera) or to the commercial message, and meeting all 3 criteria simultaneously.

36. The third factor in the preceding paragraph is often described as a circumstance in which the performer conveys the message of the product.

37. There are key elements in consideration that a performer may be upgraded. Upon information and belief, the

fact that a performer in a commercial utilizes a key prop given to her by the director and follows the director's instructions over the course of two days of shooting, as the plaintiff did in the instant case, is helpful to a claim that she was a principal performer.

38. Team Services, hired by Dentsu McGarry Bowen issued paychecks for this work, including but not limited to the base rate, session fees for the principal performer as per scale, all residuals applicable to running on air for the entire national spot per commercial, all applicable fees and terms for usage on the internet DVD and in movie theaters, and any applicable use in printed media.

The First Commercial

39. On July 18, 2013, after plaintiff checked in to the Opera Theater in Staten Island, New York, she was informed that she would be placed next to a blond female principal performer in a balcony.

40. Plaintiff also was given, by the director, a crucial prop for the scene - opera glasses - and followed the director's instructions.

41. Upon information and belief, the reason that opera glasses were shown in the balcony scene in the final versions of the commercial was to compare with, and distinguish between, old anachronistic technology of zoom in feature of opera glasses and

new-fangled technologies, such as the improved speedy zoom-in capabilities by one touch swiping of the Verizon Wireless Droid phone, that was being advertised in the commercial.

42. Toward the end of two days of shooting, a production assistant informed plaintiff that she was virtually certain to be deemed a "principal" on the commercial known by the shorthand "Opera 30" [the "First Commercial"].

43. Notwithstanding the foregoing, on or about August 8, 2013, plaintiff received pay $1,121.30 in pay for the Verizon Wireless commercial. The paystub indicated plaintiff was paid as a background performer, not as a principal performer.

44. On or about August 9, 2013, Plaintiff requested assistance of her union delegate, Angie Ruiz, in order for Plaintiff to file an upgrade claim for the two days of shooting that she worked on the Verizon Wireless job.

45. Plaintiff thereafter received confirmation that she had filed such a claim.

46. Ruiz informed plaintiff that the former would arrange a "viewing" of the final footage of the Verizon Wireless commercial in her office, consistent with the customary practice and as a standard element in the claim processing procedure.

47. In contravention to standard procedure, however, that viewing never took place.

48. On August 27, 2013, Ruiz informed plaintiff via e-mail that the Verizon Wireless commercial would air on television, and could also be seen as a YouTube link in its final edit form under the title "Opera 30."

49. Plaintiff asked Ruiz, on or about the following day, for the final cast list, a request Ruiz refused to provide.

50. Similarly, Ruiz refused to respond to plaintiff's queries about why the "viewing" appointment had never been set.

51. By August 29, 2013, Ruiz explained that plaintiff's claim was denied by the union because, ostensibly, plaintiff's image was merely profile and was not pertinent to the scene, and thus the case was closed.

52. On September 13, 2013, union representatives hung up on plaintiff when she made further inquiry.

53. On September 16th 2013, Plaintiff thereupon tried to contact Ruiz more than 10days of no response to her email reminder about the screenshot of her image online. But, it was transferred to her supervisor. Hunt who acknowledged plaintiff's email communications concerning her claim and the facts as set forth in paragraph "56" hereof.

53(A): When Plaintiff tried to get to the point, Hunt cut her off and said, she would hang up if she talks about "closed claim", and instructed Plaintiff not to harass Ruiz and prematurely ended the discussion.

The Second Upgrade Claim

54. On September 23rd 2013, Plaintiff thereafter learned that another final version of the Verizon Wireless job, called "Drop," a four-minute "droid" commercial [the "Second Commercial"] on YouTube; therefore, emailed Ruiz, cc: Hunt.

55. The version denominated as "Drop" included a clearer and different episode of Opera theater scene and was broadcast, and differed considerably from the "Opera 30" commercial. The fact that Drop was a separate and new version, and thus a separate claim could be filed for upgrade, is evidenced by the scheduled payment of "integration fee" (only for background).

55 (A) On or about September 23, 2013, Plaintiff received an email from Hunt stating, again, that the claim was closed, and that plaintiff was not upgradeable. If Plaintiff does not cease from contacting Angie and the rest in the Commercial Department, she will refer this issue to legal. She further stated that does not mean that Legal will review her claim. Her claim will not be reopened. Rather, it means that her conduct as a member of this union will be reviewed and a determination made about her future contact with the Union.

56. On September 30th 2013, Plaintiff worked in the same building where Dentsu McGarry Bowen's office is. Plaintiff spoke with Amy Doe, business representative of the Signatory employer, who said, "Midori, I agree with you, Opera 30 and Drop

are 2 different commercials. You are the Union actress, Union should assist you." She suggested Plaintiff to have the Union contact her office so that her company could manage the issue.

57. On October 3, 2013, Jeff Bennett, Union counsel, in his letter that the denied "Verizon Droid/"Opera" advertisement claim remained closed.

57(A) Bennett also stated that if Plaintiff has new matters to bring to their attention they look forward to working with her to resolve them.

57(B) Bennett stated further that, "However, we will no longer respond to any inquiries to the above referenced matter."

58. On October 28, 2013, the date of a bi-annual union meeting, there was a scheduled mandatory report by the Union, which was ordered by the president of the New York Local, Holter Graham on April 15th 2013; Graham demanded the Union to address and resolve with pending issue of retaliation/discrimination by the production company as a result of ill handling of the AFTRA legacy representatives about Plaintiff's previous upgrade claims, the internal investigation promised by Kim Hedgpeth, Retired AFTRA Executive Director, was long due to Plaintiff.

58 (A) Union thereafter determined that such scheduled reportage was in error, and no such reportage was made.

58(B) Mike Hodge, co President coerced Plaintiff not to address her complaint about Verizon Wireless Issue, or her disappointment and concerns about Union's same pattern of ill-handling of her claims to the union meeting.

58 (C) But, Hodge asked Plaintiff to address those issues to the Union staff, which was contrary to what Plaintiff was told not to by Hunt on September 23rd 2013.

59. January 8, 2014, plaintiff tried to contact the Union's television commercial manager, Beth Haynes, in Los Angeles, who advised plaintiff to contact Ruiz who had continually refused to address plaintiff's concerns.

59 (A) Haynes although affirmed what the Union's Due Diligence is, which was contrary to what Ruiz and Hunt did.

59 (B) Haynes stated as if Plaintiff was put on notice in writing and verbally that she was allowed to speak with Ruiz and their Legal department only.

59 (C) When Plaintiff denied such notification about her allowable limited contact to the Union, Sandy Kincaid, Director National TV Commercial department of SAG/AFTRA cut her off, and said, "You must speak with Angie Ruiz. I will hang up on you."

60. In fact whenever plaintiff made several efforts to contact Union representatives for valid reasons as for Upgrade claim, such efforts were thwarted by the Union either being unresponsive or prematurely ending the discussion.

61. On February 11, 2014, Plaintiff filed 2 additional upgrading claims to Ruiz via email cc: Bennett Union counsel,

and faxed to SAG/AFTRA offices for assistance, but no response.

61 (A) On or about February 19th second upgrade claim was rebuffed. Angie hung up on Plaintiff.

61 (B) When Plaintiff was at SAG/AFTRA office, she reminded him of her second upgrade claims and his promise in his Oct.3rd letter. See paragraph 57A

Bennett smiled wryly and walked away. He then looked back and waived his hands to Plaintiff.

62. On or about February 26, 2014, Plaintiff filed a charge with the National Labor Relations Board in order to combat what she perceived as an ongoing unfair labor practice.

62 (A) On July 18th 2014 Lori Hunt spoke about Union's Duty and Due Diligence, and said, no changes to claim procedure. Union's duty is based on the contractual language, which requires the Union to ask for all final versions to a producer and reviews them. As to Viewing, Union will send the copies of all of the versions to the member who filed a claim. When new version is created, a member tells the union, and the union reviews it, and sends the copies of all versions to the member until the claim is closed. When Plaintiff asked her about the case scenario after the denial of the denial of the 1st upgrading claim, when a new version is created, if the union has to reopen the case and review it, Hunt hung on her.

62 (B) Plaintiff learned that Have we met Episode Two Verizon Droid Ultra TV Commercial Super Bowl 2014 was at YouTube. Plaintiff figured multiple versions more than 2 commercials are running on air.

62 (C) On May 12th 2015 Emilia Diaz, Talent manager of Dentsu McGarry LLC Bowen stated that unfortunately, Plaintiff's own Union called her and agreed with her that Plaintiff was not supposed to be On camera, She said, "I am sorry you have to deal with SAG."

COUNT I
BREACH OF THE DUTY OF FAIR REPRESENTATION – BAD FAITH CONDUCT
[Against Both Defendants]
Damages Sought: At least $100,000

63. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "62" hereof, with like force and effect as though set forth at length herein.

64. By its bad faith conduct, defendant Union violated its duty of fair representation to Plaintiff by failing to properly process and take affirmative steps on Plaintiff's behalf and to otherwise assist Plaintiff with regard to her upgrade claim as to the first commercial.

65. The failure of the Union defendants to properly process Plaintiff's upgrade claim and to affirmatively assist

her with regard to the first upgrade claim constitutes a continuing violation of the Union's duty of fair representation.

66. By virtue thereof, Plaintiff has been harmed in such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000.00) Dollars.

COUNT II
BREACH OF THE DUTY OF FAIR REPRESENTATION – ARBITRARY CONDUCT
[Against Both Defendants]
Damages Sought: At least $100,000

67. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "66" hereof, with like force and effect as though set forth at length herein.

68. By its arbitrary conduct, the Union defendants violated their duty of fair representation to Plaintiff by failing to properly process and take affirmative steps on Plaintiff's behalf and to otherwise assist Plaintiff with regard to her upgrade claim as to the first commercial.

69. The failure of the Union defendants to properly process Plaintiff's upgrade claim and to affirmatively assist her with regard to the first upgrade claim constitutes a continuing violation of the defendants' duty of fair representation.

70. By virtue thereof, Plaintiff has been harmed in such

sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000.00) Dollars.

COUNT III
BREACH OF THE DUTY OF FAIR REPRESENTATION –
BAD FAITH CONDUCT
[Against Both Defendants]
Damages Sought: At least $100,000

71. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "70" hereof, with like force and effect as though set forth at length herein.

72. By its bad faith conduct, the Union defendants violated their duty of fair representation to Plaintiff by failing to properly process and take affirmative steps on Plaintiff's behalf and to otherwise assist Plaintiff with regard to her upgrade claim as to the second commercial.

73. By virtue thereof, Plaintiff has been harmed in such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000.00) Dollars.

COUNT IV
BREACH OF THE DUTY OF FAIR REPRESENTATION –
ARBITRARY CONDUCT
[Against Both Defendants]
Damages Sought: At least $100,000

74. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "73" hereof, with like force and effect as though set forth at length herein.

75. By its arbitrary conduct, the Union defendants

violated their duty of fair representation to Plaintiff by failing to properly process and take affirmative steps on Plaintiff's behalf and to otherwise assist Plaintiff with regard to her upgrade claim as to the second commercial.

76. By virtue thereof, Plaintiff has been harmed in such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000.00) Dollars.

COUNT V

BREACH OF UNION CONSTITUTION

[Against Both Defendants]

Damages Sought: At least $100,000

77. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "76" hereof, with like force and effect as though set forth at length herein.

78. In that same September 23, 2013 communication, Hunt advised plaintiff that further contact with the union about the matter could result in review of plaintiff's status as a member of the union.

79. Plaintiff, justifiably fearful that union officials would seek to make good on their somewhat veiled threat to expel her from the Union, and concerned about her ability to continue to earn a living, thereupon ceased further communications with the union about the matter.

80. The Union's Constitution, however, states only limited grounds for discipline against a member and, more particularly, expulsion of a member from the Union.

81. Upon information and belief, Article XIV of the Constitution states that discipline may be imposed only for "[v]iolation of any of the provisions of this Constitution, or the policies, rules or regulations adopted by the Union or any of its Locals" or for "[e]ngaging in actions antagonistic to the interests or integrity of the Union, any of its affiliated Locals or its membership, including providing services covered by the Union's jurisdiction for any employer declared unfair by the National Board."

82. Upon information and belief, the Union's Constitution identifies as among its "Objectives" the following:

a) "Increasing the power and leverage of our members in their bargaining relationships with the employers in our industries";

b) "Organizing workers in the entertainment and media industries in order to maximize our bargaining strength";

c) "Protecting and securing the rights of our members in their professional activities . . . ."

83. The Constitution is a contract between the Union and each of its members.

84. By its actions in ignoring Plaintiff's legitimate upgrade claims and threatening to expel her from the Union if she were to persist in such legitimate claims, the Union violated its Constitution.

85. By reason of the foregoing, the Union defendants breached their own Constitution.

86. By virtue thereof, Plaintiff has been harmed in such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000.00) Dollars.

WHEREFORE, Plaintiff *pro se* MIDORI HOSOKAWA demands judgment against defendants SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS and NEW YORK LOCAL OF SCREEN ACTORS GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, as follows:

(a) As to Count I, as against both defendants, such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000) Dollars;

(b) As to Count II, as against both defendants, such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000) Dollars;

(c) As to Count III, as against both defendants, such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000) Dollars;

(d) As to Count IV, as against both defendants, such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000) Dollars;

(e) As to Count V, as against both defendants, such sum as may be determined at trial, but in no event less than One Hundred Thousand ($100,000) Dollars;

– together with the costs and disbursements of this action, applicable interest, attorneys' fees (if plaintiff *pro se* engages counsel), and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 1, 2015

MIDORI HOSOKAWA
400 West 43rd Street, #17-O
New York, New York 10036
(212) 502-5241

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Midori Hosokawa

(In the space above enter the full name(s) of the plaintiff(s).)

COMPLAINT

-against-

SAG/AFTRA, New York Local,
Ms. Tae Je Simmons
Team Services, Ms. Karen Connelly
~~Dentra McGarry Bowen LLC~~,
Ms. Emily Derf
(Emilie)

Jury Trial: ☑ Yes ☐ No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff
Name Midori Hosokawa
Street Address 400 W. 43rd St #17-0
County, City New York,
State & Zip Code N.Y. 10036
Telephone Number (212) 502-5241, (917) 848-2060

B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1
Name SAG/AFTRA, New York Local (inc) Ms. Tae Je Simmons
Street Address 1900 Broadway 5th floor. ~~N.Y. N.Y. 10023~~

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See attachment

County, City New York,
State & Zip Code N.Y. 10023
Telephone Number (212)944-1030 ~~(212)~~ 8...

Defendant No. 2
Name Team Services, — Employer representative Ms. Karen Connelly
Street Address 901 W Alameda Ave Suite 100
County, City Burbank,
State & Zip Code CA 91506-2801
Telephone Number (818) 558-3261 ; employer representative

Defendant No. 3
Name Dentsu McGarry Bowen LLC — Ms. Emilie Diaz
Street Address 601 W. 26th St
County, City New York,
State & Zip Code N.Y. 10001
Telephone Number (212) 598-2900 / (212) 488-4482

Defendant No. 4
Name
Street Address
County, City
State & Zip Code
Telephone Number

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than $75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? *(check all that apply)*

☒ Federal Questions ☐ Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? Breach of fiduciary duty of fair representation; the Union's conduct was arbitrary discriminatory, or in bad faith. On or about Feb 19th 2014, SAG-AFTRA, by its officers, agents & representatives has failed to refused to process Midori Hosokawa's valid upgrade claim with due diligence

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship

Defendant(s) state(s) of citizenship

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events.

Ignore & See attached;

You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? New York, NY.

B. What date and approximate time did the events giving rise to your claim(s) occur? Around Feb. 19th-2014, followed by filing 2nd formal TV commercial upgrade claims on Feb. 11th-2014

V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation. ______________________________

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ___ day of _____________, 20__.

Signature of Plaintiff ______________________________

Mailing Address ______________________________

Telephone Number ______________________________

Fax Number *(if you have one)* ______________________________

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this _____ day of ________________, 20__, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: ______________________________

Inmate Number ______________________________

A. Where did the events giving rise to your claim(s) occur?) Opera Theater on the Staten Island upgrade claim was filed in NYC Violations happened in NYC, Manhattan

B. What date and approximate time did the events giving rise to your claims(s)occur?

Around Feb.19th 2014, followed by the 2nd formal upgrade TV Commercial Upgrade claims I flied on Feb.11th 2014.

C. Facts: SAG/AFTRA breached its duty of fair representation; as a result, damages incurred to me, I am not getting paid for all the session fees, residuals for this national spot Droid TV Commercials as well as usage of Internet, and movie theaters, the rest of principal performers are currently earning.

I was hired as a background performer for this Union TV Commercial work for 2 days, July 18th and 19th 2013. However, I did a principal performer's job after I was placed right next to a female blond performer in the one seat arranged balcony and was given the key prop, "opera glasses" by the director and followed his instruction throughout the 2 shooting days. The commercial is about improved zoom in features similar to the functionality of opera glasses, which is embedded into droid phone camera. Balcony scene is contrast of Old World symbolized by opera glasses vs. New World by new technology. The Production Assistant informed me at the end that I was 99% upgradeable.

I filed the 1st upgrade claim on Aug.7th 2013, and Angie Ruiz informed me that I was not upgradeable after she sent me **only 1 You Tube version** on Aug.27th 2013 and **closed my case almost immediately without performing the Union's required Due Diligence**, which was to **ask all the final footages (=versions)** of Commercial to Advertising Agency and **provide me the same, but provided me only YouTube version** on Aug.27th 2013. Although she promised to set up an appointment for the Viewing, she refused to let me have access to all the footages. Thus, the Union breached its duty of fair representation, despite that I met the 3 criteria to be a principal performer set forth in the collective bargaining agreement.

Since multiple new versions were running on air and the validity of the claim is detected, I file the 2nd formal upgrade claims on February 11th 2014 to Angie Ruiz and Jeff Bennett Esq. On February 18th I left my voice message to Angie Ruiz and I was told that she would be there the next day and I believe it was the next day I spoke to her, but she did not try to deal with my claims, but said she would hang up on me if I talked about the closed claim, and eventually hang up on me.

Drop" the integrated new version which all the background performers were compensated as Integration fees (one time for background performers), back in September 2013 was a clear cut valid claim which I emailed but ignored by Angie Ruiz (cc: Lori Hunt), and then threatened by Lori Hunt, not to talk about it; if I continue talking about it, she would let the legal department do something about my membership, though Lori admitted that she viewed the video clip and my screen shot in the email, she did not let me talk, but hung up on me. I included that version in this formal upgrade claims I made on February 11th 2014, among which Super Bowl Version, Have we met episode Two Verizon Droid Ultra TV Commercial 2 etc.,

January 8th 2014 when I followed the advice of the performer, who had similar experience with his AT&T Commercial job, I called the national TV Commercial department in CA. He was told the same, he was not upgradeable and then he said he would sue the union, the union let him talk to the higher manager and he got his payment in 2 weeks.

Corvette well explained to me about what the union's duty and due diligence are and Beth Haynes, the manager acknowledged with me about what she said above bold typed explanation, but when I tried to seek out their assistance, Ms. Haynes as if I was notified in writing and verbally that I was supposed to talk to only *Angie Ruiz and their legal department, and Sandy Kincaid, her supervisor, she said she wound hang up on me, and tried to give me a runaround.

Ms. Hunt clearly acknowledged all of the above statement about the Union's duty and Due Diligence the bold typed above on July 18th and August 1st 2014. As well as Hawaii Executive Director, Ms. Hunt, too, stated that even thought the first upgrade Claim was not successful, as far as the validity of claim was notified, the union will take a look at it, to see whether it is upgradeable. According to the Hawaii Executive Director, it is transparency that if I requested to view the footages, the Union should let me, which is a customary claim procedure. Ms. Hunt even said no changes of the claim procedures the Union, so the Union arbitrarily, discriminatorily, invidiously and perfunctorily handled my cases. All the validity of the claims are verified and acknowledged by Verizon Wireless sales manager, sales representatives, Motorola marketing manager, iOS Senior Advisor, etc.,

Importantly, the Union closed my case way too prematurely without required its Due Diligence. When I get to the crucial point, Ms. Hunt always said, she would hang up on me, and she always did.

V. Relief:

Recovered all the money due me as a principal performer for this Verizon Droid National Spot Commercial, sessions fees, residuals, all the applicable fees, including late fees, all the applicable Usage, of Internet, movie theaters, etc., My images are kept as screen shots on the website, as well.

All the cost incurred to me so far when I handled this matter. Since I have been suffering from recurring pattern of behavior by SAG, AFTRA, SAG/AFTRA, as a result damages have been accumulated and negatively affected to the ordinary casting, and my steady income dropped significantly after Royal Pains in 2009, another unfair practice, in which I was prohibited to speak with Ms. Claire Tuck of Cohen Weiss &

Simon LLP, which is the law firm representing SAG/AFTRA, the attorney who was representing me for the upgrade arbitration case in 2010. I was never informed the truth, about what the producer was trying pay me without formal claims, so the producers must have been misinformed about my intention, then. Even after I filed a formal complaint about the ill handling by the Union staff, David Salvador and Victoria Pistone, the Union continued using the same staffs, which caused the Union to hire outside counsel due to conflict of interest. I ask for the consideration of proportionate compensation for all those damages in addition to Verizon Unfair practices.

August 8th 2014

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIDORI HOSOKAWA,

Plaintiff,

-against-

SAG/AFTRA, ET AL.,

Defendants.

14-CV-6189 (LAP)

ORDER TO AMEND

U S DISTRICT COURT SDNY
2015 JUL -1 P 1: 51
RECEIVED

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff, proceeding *pro se* and *in forma pauperis*, brings this action alleging that her union breached its duty of fair representation. For the following reasons, Plaintiff is directed to amend her complaint.

STANDARD OF REVIEW

The Court has the authority to screen *sua sponte* an IFP complaint at any time and must dismiss the complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Named as Defendants in this action are "SAG/AFTRA" (Screen Actors Guild and American Federation of Television and Radio Artists), New York Local; Ms. Tae Ti Simmons; Team Services; Ms. Karen Connelly; and Dentsu McGarry Bowen LLC; and Ms. Emily (Emilia)

Diaz. Plaintiff alleges that she was hired to work for two days, July 18 and 19, 2013, as a "background performer" in a Droid cellphone commercial. According to Plaintiff, she did a "principal performer's job" that entitled her to a higher rate of pay; a production assistant told Plaintiff that she was "99% upgradeable." Plaintiff alleges that the commercial aired on television, the internet, and in movie theaters. After Plaintiff filed an "upgrade claim" on August 7, 2013, Angel Ruiz informed Plaintiff that she was not upgradeable and immediately closed Plaintiff's case without performing the requisite "due diligence." According to Plaintiff, Ruiz improperly provided Plaintiff with "only 1 You Tube version" of the commercial instead of all the final versions.

On February 11, 2014, Plaintiff filed a second upgrade claim with Ruiz and Jeff Bennett, an attorney. According to Plaintiff, Ruiz hung up on her and did not "deal with" her claim. Plaintiff further asserts that Lori Hunt threatened Plaintiff that if she continued to "talk about it" she (Hunt) would ask the "legal department to do something about" Plaintiff's union membership. Plaintiff alleges that she was given the "runaround" by Ms. Haynes and Sandy Kincaid. Plaintiff claims that Defendants violated the collective bargaining agreement and breached the union's duty of fair representation.

DISCUSSION

Plaintiff's complaint does not satisfy federal pleading rules. Rule 8 of the Federal Rules of Civil Procedure requires plaintiffs to make "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court has held that this rule requires a plaintiff to provide some details about what each defendant did or failed to do. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). It is not enough for a complaint to state that the defendant unlawfully harmed the plaintiff. *Id.* (citing *Twombly*, 550 U.S. at 555). A complaint must include "factual enhancement" of the plaintiff's legal claims; in other words, a complaint must include some background information about how the defendant harmed the plaintiff. *Id.* (citing *Twombly*, 550 U.S. at 557). In order to state a claim for relief, a complaint must contain enough background facts to allow the Court to reasonably infer that each defendant is liable to the plaintiff. *Id.* (citing *Twombly*, 550 U.S. at 556). Plaintiff's complaint does not comply with Rule 8 because her allegations are vague and conclusory.

Plaintiff is claiming that the union's handling of her upgrade claim breached the collective bargaining agreement between her union and the employer, giving rise to a cause of action under § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a); *see Smith v. Evening News Ass'n*, 371 U.S. 195, 200-201 (1962) (holding that individual may sue under § 301 for breach of the collective bargaining agreement). Under federal labor law, an employee may bring a complaint against her union and/or her employer alleging (1) that the employer breached a collective bargaining agreement, and (2) that the union breached its duty of fair representation in redressing her grievances against the employer. *See White v. White Rose Food*, 128 F.3d 110, 113 (2d Cir. 1997). In such an action, "an employee is required to attempt to exhaust any grievance or arbitration remedies provided in the" collective bargaining agreement. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 163 (1983). The employee may sue the union or the employer, or both, but must allege violations on the part of both regardless of which entities she chooses to sue. *Id.* at 165 (describing "hybrid § 301/fair representation claim").

A union has a duty to represent fairly all employees subject to the collective bargaining agreement. *See Air Line Pilots Ass'n v. O'Neill,* 499 U.S. 65, 67 (1991). However, a court's review of a union's representation of its members is highly deferential, and a court is not to substitute its judgment for that of a union. *Id.* at 78. Instead, the duty of fair representation is limited to avoiding conduct that is "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes,* 386 U.S. 171, 190 (1967); *Stevens v. Moore Business Forms,* 18 F.3d 1443, 1447 (9th Cir. 1994). "A union's actions breach the duty of fair representation 'only if the union's conduct can be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary.'" *Marquez v. Screen Actors Guild, Inc.,* 525 U.S. 33, 45 (1998). This wide range of reasonableness gives the union room to make discretionary decisions and choices, even if those judgments are ultimately wrong. *Biberaj v. Pritchard Indus., Inc.,* 859 F. Supp. 2d 549, 560 (S.D.N.Y. 2012).

Plaintiff alleges that her union failed to investigate the upgrade claim she submitted in connection with her work on a Droid commercial but instead closed the case. Such an allegation on its own does not give rise to an inference that the union acted arbitrarily, irrationally, or in a discriminatory manner. In addition, Plaintiff names individuals in the caption and body of her complaint without identifying who they are, what role they played in what occurred, and what claims she is bringing against them.[1] It is not clear to the Court whether or not these individuals are affiliated with the employer.

Should plaintiff wish to proceed with a fair representation suit against her union or employer, or both, she is advised to amend her complaint to indicate how her union acted in a manner that was "arbitrary, discriminatory, or in bad faith" and whether her employer breached the collective bargaining agreement. Plaintiff is advised that where a collective bargaining agreement sets forth a grievance procedure, it generally must be exhausted before a plaintiff can sue, but courts have discretion to decide whether to require exhaustion. *See Clayton v. Int'l Union United Automobile,* 451 U.S. 679, 685 (1981). In addition, the statute of limitations period for a hybrid § 301/duty of fair representation action is six months, *DelCostello*, 462 U.S.at 169, which begins to run when the employee "knew or should have known of the breach of the duty of fair representation," *Cohen v. Flushing Hosp. & Med. Ctr.*, 68 F.3d 64, 67 (2d Cir. 1995).

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[1] Plaintiff cannot state LMRA claims against the individual Defendants. *See Morris v. Local 819, Int'l Bhd. of Teamsters,* 169 F.3d 782, 784 (2d Cir. 1999) ("The Supreme Court has long held that 'union agents' are not personally liable to third parties for acts performed on the union's behalf in the collective bargaining process."); *Farrell v. Hellen,* 367 F. Supp. 2d 491, 505 (S.D.N.Y. 2005) (noting that in this district, individual union officials and members are not subject to damages claims under the LMRA).

LEAVE TO AMEND

The Court grants Plaintiff leave to amend her complaint to state valid claims against individuals who were personally involved in violating her constitutional rights. The amended complaint should make allegations that satisfy the legal standards explained in this order.

For each of the Plaintiff's claims, the amended complaint should explain the following to the best of the Plaintiff's knowledge:

(a) the names and titles of all relevant persons;

(b) the date, time and location of each event;

(c) what each defendant did or failed to do;

(d) how each defendant's acts or failures to act harmed the Plaintiff;

(e) the law or constitutional right that is the basis for the Plaintiff's claims;

(f) any other facts that support the Plaintiff's claims; and

(g) relief the Plaintiff seeks from the Court.

The amended complaint will completely replace the original complaint. For that reason, the amended complaint should contain all the information necessary to make a short, plain statement explaining why the Plaintiff is entitled to relief against each defendant.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy to Plaintiff, and note service on the docket. Plaintiff is directed to file an amended complaint containing the information specified above. The amended complaint must be submitted to this Court's Pro Se Office within sixty days of the date of this order, be captioned as an "AMENDED COMPLAINT," and bear the same docket number as this order. An Amended Complaint form, which Plaintiff should complete as specified above, is attached to this order. No summons will issue at this time. If Plaintiff fails to comply with this order within the time allowed, and cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: October 28, 2014
New York, New York

Loretta A. Preska

LORETTA A. PRESKA
Chief United States District Judge

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